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FM AMEMBASSY BAGHDAD
TO RUEHC/SECSTATE WASHDC PRIORITY 2768
INFO RUCNRAQ/IRAQ COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 002692

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E.O. 12958: DECL: 08/12/2017

TAGS: [PGOV](#) [KDEM](#) [IZ](#)

SUBJECT: WHY WE CARE ABOUT THE PROVINCIAL POWERS LAW

Classified By: Political Counselor Matt Tueller for Reasons 1.4 (b) and (d)

¶1. (C) SUMMARY. Despite renewed debate in July, the Council of Representatives (CoR) failed to pass the Provincial Powers Law before the August recess. During CoR's July 17 and 25 sessions parliamentarians shouted comments, demanded changes to the draft text, and questioned the constitutionality of certain provisions, underscoring both the array of issues this law addresses and its importance to CoR members. Formally called "The Law for Governorates Not Formed Into A Region," the law defines the powers of and relationships between provincial governments and the central government, as well as among and within provincial institutions. A July 8 report submitted by the law's drafters, CoR's Regions and Governorates Committee (the Committee), sparked the latest round of discussions after almost five months of floor inaction. Even while presenting the report the Committee continued to identify disputed articles such as the Governors control over federal security forces present in the province, and the Prime Minister's authority over Governors. Given the issues which remain unresolved, the differences of opinion between CoR members, the Prime Minister's Office (PMO) and provincial leaders it appears unlikely the provincial powers law will pass early in the next CoR session. However, this law's journey through CoR offers a unique view of how Iraqi officials, local and national, are learning to use the legislative process in a nascent democracy.

LEGISLATIVE HISTORY: CRITICAL AND CONTENTIOUS FROM THE START

¶2. (C) The Provincial Powers Law is considered a critical piece of legislation not only because it defines the relationship between provincial governments and the central government, as well as the division of power among provincial institutions, but also because the CoR believes it must be completed before an elections law moves forward. The law's first reading occurred January 16, followed almost immediately by a second reading on February 7. CoR's Regions and Governorates Committee (the Committee) read the same text during both readings, although during the second reading Committee Deputy Chairwoman Nada al-Sudani (Shia, Dawa) highlighted certain articles which the Committee would amend before the law's third and final reading. The key provisions of the draft text address the powers and competencies of local and Provincial Councils; Governors' powers and competencies, as well as how to appoint and remove the Governor; the Governors' authorities over provincial security forces; the PC's composition, membership requirements, and rights and immunities; how PCs can be dissolved and re-elected; the relationship between the Governor, PC, and Ministry representatives in the province; and budget structure and execution.

¶3. (C) Once considered a relatively noncontroversial law, the Provincial Powers Law returned to the Committee for almost five months after its second reading, as Committee members considered more than six hundred recommended changes received

from provincial representatives, the PMO, and NGOs. Collectively, according to Committee members, the suggestions offered contradictory views of federalism, with proposals arguing for and against strong provincial governments vis-a-vi the central government, as well as competing proposals lobbying for stronger Governors at the expense of provincial councils and vice versa.

JULY REVEALS A NEW REPORT AND RESUMED DEBATE

¶4. (C) A July 8 report submitted by the Committee identified its proposed changes to the text presented on January 16 and February 7. The key elements of the report's recommended changes include granting the Prime Minister the authority to remove a Governor based upon a request from one-fourth of the Provincial Council (PC) members, allowing the CoR to remove a Governor by an absolute majority of parliamentarians, and removing all elections provisions for incorporation into a separate elections law. Furthermore, the July 8 report notes that upon its passage the Provincial Powers Law will cancel CPA Order 71, currently the directive which defines "the authorities and responsibilities of the provincial, municipal and local levels of government...(with the goal) of improving the delivery of services to the provinces and making the government more responsive to the needs of the people."

¶5. (C) On July 17 and 25, discussion on the law resumed. CoR debate revealed, and Committee Chairman Hashim al-Tae (Sunni, Iraqi Islamic Party - IIP) and al-Sudani confirmed, several issues remain contentious, most notably the constitutionality of several articles (particularly articles defining the powers given to the provinces), whether provincial councils are an "executive" or "legislative" body,

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whether the PM or the CoR should have the ability to remove a Governor, and Council members' remuneration and retirement benefits. Additionally, the July 8 report notes that an article from the earlier draft text allowing Governors to command federal forces present in the province during emergencies remains disputed.

DESPITE RECESS DISCUSSIONS CONTINUE

¶6. (C) The Committee did not produce final text incorporating proposed changes to the law before the August recess. Given that CoR members continued to submit written suggestions for further amendments during the July 25 debate, it is uncertain when a final text will be finalized. During the July 25 session Minister of State for Parliamentary Affairs Safa al-Safi suggested that the Committee needs additional time to discuss how to reconcile the various comments provided by CoR members, coordinate with the PMO, and ensure a careful legal review. Even when PolCouns pushed to keep the law moving in a July 25 meeting, Deputy CoR Speaker Khalid al-Attiyah was disinclined to fast-track the law.

¶7. (C) Since the August recess began interested groups continue to meet GOI officials to discuss their concerns with the draft law. On August 7 Vice President Adil Abdul Mehdi hosted approximately 15 chairmen and representatives from Baghdad District Councils who presented various ideas and issues with the law as currently written, focusing specifically on the District Councils' need for legally-mandated capital and operational budgets, as well as a substantive authority to draft and implement district-wide ordinances. They offered their opinion that, as currently drafted, the law gives too much power to province-wide institutions, such as the Governor. Abdul Mehdi listened to their concerns and agreed to assist in arranging future meetings between District Council representatives and CoR members so that the parliamentarians can hear their comments directly. The law is also on the agenda for the upcoming meeting between Iraq's leaders, where the agenda lists it as

one of a small handful of legislative priorities the group will discuss.

COMMENT

18. (C) The Provincial Powers Law's progress through CoR and the surrounding debate it produced underscores the seriousness with which provincial and central government officials view this piece of legislation. This law is arguably an important step in defining federalism in Iraq and defining the preferred balance of power within governmental institutions, if only at the provincial level. In addition to the unresolved issues the Iraqis have identified, the issue of Baghdad, its special status and the different types of provincial and municipal institutions needed to administer both the city and the province remain unanswered. Baghdad provincial and municipal officials are aware of this omission and are learning to use new tools, including lobbying techniques, to have their voices heard. As July revealed, debate on the Provincial Powers Law is far from finished, making it unlikely the law will pass quickly in the next CoR session. In this instance, however, the debate, dialogue, lobbying and engagement this law prompted between all levels of local and national government and among the various parties in CoR should itself be recognized as a significant sign of progress. The next challenge CoR members face is taking the various and conflicting opinions and developing them into a coherent piece of legislation which ultimately serves the Iraqi people by adequately defining the division of authorities among provincial institutions as well as their relationships with the central government.

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